

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY ANN BROWN,

Plaintiff,

v.

DR. PREETINDER SIDHU and VA
MEDICAL CENTER,

Defendants.

8:20CV342

ORDER

This matter is before the Court on defendants Dr. Preetinder Sidhu (“Sidhu”) and VA Medical Center’s (the “agency” and collectively, “defendants”) Motion to Dismiss and Motion to Substitute (Filing No. 24). The defendants “move the Court to dismiss this action pursuant to Rule 12(b)(5) and Rule 12(b)(2) of the Federal Rules of Civil Procedure, for the reason that [pro se plaintiff Mary Ann Brown (“Brown”)] has failed to properly serve [them] and this Court lacks personal jurisdiction over them.” The defendants conversely move the Court for an order substituting the United States of America for Sidhu and the agency. Finally, the defendants alternatively argue Brown’s Complaint (Filing No. 1) “should be dismissed as it either fails to state a claim upon which relief can be granted, under Fed. R. Civ. P. 12(b)(6), or this Court lacks subject matter jurisdiction, under Fed. R. Civ. P. 12(b)(1), over the cause of action.”

The defendants’ arguments are generally well-taken. Brown should review them carefully and must take further action to maintain her case. The Court nonetheless finds dismissal is not warranted at this time.

The defendants are correct that Brown has not properly served them under Federal Rule of Civil Procedure 4(i), which governs serving summons on the United States and its agencies and employees. To properly serve a federal agency or a federal employee in their official capacity under Rule 4(i)(2), Brown “must serve the United States and also send a

copy of the summons and of the complaint by registered or certified mail to the agency . . . or employee.” Fed. R. Civ. P. 4(i)(2). To properly serve the United States under Rule 4(i)(1), Brown must “deliver a copy of the summons and of the complaint to the United States attorney for the” District of Nebraska (or their designee) and must “send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.” To properly serve a federal employee sued in their individual capacity under Rule 4(i)(3), Brown “must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).”

These requirements have not been met. As the defendants point out, the record indicates the defendants were personally served by a Lancaster County Sheriff’s Deputy on March 29, 2021. Summons has not been issued for the United States nor has service been made on the U.S. Attorney for the District of Nebraska and the Attorney General of the United States as required by Rule 4(i)(2). Relatedly, neither defendant was sent a copy of the summons and complaint by registered or certified mail.

Critical of Brown’s “continual” failure to establish valid service of process, the defendants urge the Court to dismiss this case without prejudice under Rule 12(b)(5). Given Brown’s pro se status and the particular circumstances of this case, the Court finds summary dismissal of this action is too severe at this point. Instead, the Court will grant Brown a reasonable opportunity to cure her failure to properly serve the defendants under Rule 4(i) as set forth in this order. The Court does not reach the defendants’ remaining arguments at this time.

Based on the foregoing,

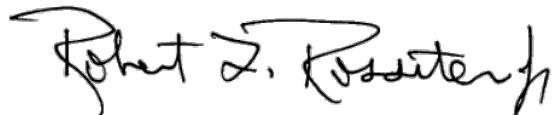
IT IS ORDERED:

1. Defendants Dr. Preetinder Sidhu and VA Medical Center’s Motion to Dismiss and Motion to Substitute (Filing No. 24) is denied without prejudice to reassertion at a later time.

2. The Clerk of Court shall provide plaintiff Mary Ann Brown four Summons in a Civil Action forms for Brown to complete and return to the Clerk for issuance.
3. Brown shall have until July 20, 2021, to perfect service in accordance with Federal Rule of Civil Procedure 4(i).
4. Failing to comply with this order could result in the dismissal of this case without further notice.

Dated this 18th day of May 2021.

BY THE COURT:



Robert F. Rossiter, Jr.
United States District Judge